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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA,**  
**SAN FRANCISCO DIVISION**

**PHILIP E. KAY, JOHN W. DALTON,**  
**LINDSAY MARCISZ, BLAIR**  
**POLLASTRINI, and JESSICA**  
**POLLASTRINI,**

Plaintiffs,

v.

**STATE BAR OF CALIFORNIA, a**  
**public corporation, and THE BOARD**  
**OF GOVERNORS OF THE STATE**  
**BAR OF CALIFORNIA, collectively;**  
**HOLLY FUJIE, in her official capacity,**  
**LUCY ARMENDARIZ, in her official**  
**capacity, SCOTT J. DREXEL,**  
**individually and in his official capacity,**  
**ALLEN BLUMENTHAL, individually**  
**and in his official capacity, JEFF DAL**  
**CERRO individually and in his official**  
**capacity, and DOES 1 through 50,**  
**inclusive.**

Defendants.

Case No. **1135**

**COMPLAINT FOR**  
**DECLARATORY AND**  
**INJUNCTIVE RELIEF**

- I. VIOLATION OF 42 U.S.C. § 1983 (PROCEDURAL DUE PROCESS)**
- II. VIOLATION OF 42 U.S.C. § 1983 (FREE SPEECH)**
- III. VIOLATION OF 42 U.S.C. § 1983 (SUBSTANTIVE DUE PROCESS)**
- IV. VIOLATION OF 42 U.S.C. § 1983 (EQUAL PROTECTION)**
- V. INJUNCTIVE AND DECLARATORY RELIEF**

**[IMMEDIATE TEMPORARY**  
**RESTRAINING ORDER REQUESTED]**

## **I. INTRODUCTION AND SUMMARY OF THE ACTION**

1. Plaintiffs comprise two attorneys, PHILIP E. KAY and JOHN W. DALTON (“Plaintiffs Attorneys”), and clients they represent in *Marcisz v. UltraStars Cinemas*, LINDSAY MARCISZ, BLAIR POLLASTRINI, JESSICA POLLASTRINI (“Plaintiffs Clients”). This complaint is brought to challenge actions taken against Plaintiffs Attorneys by the State Bar of California (“State Bar”), which violate Plaintiffs Attorneys’ rights afforded by the First, Fifth, and Fourteenth Amendments to the United States Constitution. The State Bar of California, including Judge Lucy Armendariz of the State Bar Court and the Office of the Chief Trial Counsel (“OCTC”), are unlawfully prosecuting Plaintiffs Attorneys, and their refusal to stay the proceedings to allow Plaintiffs Attorneys to finish litigating Plaintiffs Clients’ lawsuit infringes on Plaintiffs Clients’ right of petition for redress and access to the courts.

2. Defendants are pursuing an unprecedented and selective prosecution, against KAY and DALTON, who are nationally recognized and successful civil rights attorneys. The State Bar defendants have and continue to violate Plaintiffs’ free speech, substantive and procedural due process rights afforded under the United States Constitution by, *inter alia*, unfairly prosecuting Plaintiffs Attorneys and depriving them of a fair trial in violation of plaintiffs’ due process rights, and attempting to chill Plaintiff Attorneys’ constitutionally protected speech and impair their ability to fulfill their legal obligations as zealous advocates to their clients.

3. Plaintiffs Attorneys seek declaratory and injunctive relief in order to prevent the immediate and irreparable injury, loss, or damage to themselves and their clients, Plaintiffs Lindsay Marcisz, Blair Pollastrini and Jessica Pollastrini (“Plaintiff Clients”).

## **II. JURISDICTION AND VENUE**

4. This is an action brought pursuant to the laws of 42 U.S.C. § 1983. The jurisdiction of this court is predicated upon this statute and 28 U.S.C. § 1331 (federal question jurisdiction).

5. Venue is proper in this Court because the Northern District is the judicial

1 district is in which the claim arose, pursuant to 28 U.S.C. § 1391(b). The proceedings  
 2 based on the OCTC's Notice of Disciplinary Charges ("NDC") against KAY and  
 3 DALTON are currently set for trial in San Francisco, to commence on March 16, 2009.

### 4 **III. PARTIES**

5 6. Plaintiff PHILIP E. KAY is, and at all times mentioned herein was, a citizen  
 6 and resident of the State of California. He is licensed to practice law in the State of  
 7 California and has been an active member of the State Bar of California since 1981. He  
 8 has no disciplinary record with the State Bar.

9 7. Plaintiff JOHN W. DALTON is, and at all times mentioned herein was, a  
 10 citizen and resident of the State of California. He is licensed to practice law in the State  
 11 of California and has been an active member of the State Bar of California since 1996.  
 12 He has no disciplinary record with the State Bar.

13 8. LINDSAY MARCISZ, BLAIR POLLASTRINI, JESSICA POLLASTRINI  
 14 ("Plaintiff Clients"), are the clients of KAY and DALTON in the San Diego Superior  
 15 Court case entitled *Marcisz, et al, v. Ultrastar Cinemas*, Case Number GIC 820896.  
 16 This case is ongoing as the retrial of the amount of punitive damages is expected to take  
 17 place within the next several months.

18 9. Defendant STATE BAR OF CALIFORNIA is a public corporation in the  
 19 judicial branch of the State of California, incorporated under the laws of the State of  
 20 California with its principal place of business in the State of California. The State Bar  
 21 acts through THE BOARD OF GOVERNORS OF THE STATE BAR OF  
 22 CALIFORNIA, which makes rules and regulates and operates the State Bar. Defendant  
 23 HOLLY FUJIE is the current State Bar president, a member of the Board of Governors,  
 24 and the State Bar's chief officer. Ms. Fujie is being sued in her official capacity.

25 10. The State Bar Court is the adjudicative tribunal acting as an administrative  
 26 arm of the California Supreme Court to hear and decide attorney disciplinary and  
 27 regulatory proceedings and to make recommendations to the Supreme Court regarding  
 28 those matters. Judge LUCY ARMENDARIZ is the State Bar Court judge assigned to

1 preside over the trial of the disciplinary proceedings brought against Plaintiffs KAY and  
2 DALTON. Judge Armendariz is being sued in her official capacity.

3 11. Defendant SCOTT J. DREXEL is Chief Trial Counsel of the Office of the  
4 Chief Trial Counsel, the office within the State Bar which is the prosecutorial arm of the  
5 State Bar in attorney discipline and regulatory matters. The Office of the Chief Trial  
6 Counsel functions under the direction of the Chief Trial Counsel. Defendants ALLEN  
7 BLUMENTHAL, and JEFF DAL CERRO are Deputy Trial Counsel of the Office of  
8 Chief Trial Counsel. Messieurs Drexel, Blumenthal, and Dal Cerro are being sued in  
9 their individual and official capacities.

10 12. The true names and capacities of DEFENDANTS named herein as DOES I  
11 through 50, inclusive, whether individual, corporate, associate, or otherwise, are  
12 unknown to Plaintiffs, who therefore sue such defendants by such fictitious names.  
13 Plaintiffs will amend this Complaint to show true names and capacities when they have  
14 been determined.

15 **IV. ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

16 13. Plaintiff KAY and DALTON are successful civil rights attorneys who  
17 represent the rights of discrimination and harassment victims and whistleblowers before  
18 the superior and appellate courts of the State of California and United States District  
19 Courts. Plaintiff Attorneys, on behalf of their clients, frequently take positions in  
20 courtroom advocacy that are not consistent with those espoused by corporate defense  
21 attorneys or their clients, all of whom have clear financial and ideological interests  
22 adverse to the claims of Plaintiffs.

23 14. Plaintiff KAY is a solo practitioner who has spent the majority of his career  
24 fighting to advance the rights of women and minorities in the workplace, acting as lead  
25 counsel in numerous civil rights trials which has resulted in the largest non-class action  
26 sex harassment verdicts in the United States and four of the largest sex harassment  
27 verdicts in California, including the landmark case of *Weeks v. Baker & McKenzie*.  
28 KAY has been acknowledged by numerous trial judges for his outstanding advocacy in

1 orders awarding him attorneys' fees at the upper hourly rate for attorneys with a similar  
2 level of experience.

3 15. For the 27 years KAY has been litigating cases, he has never been cited for  
4 contempt or fined for engaging in attorney misconduct by any court; nor has he  
5 previously been the subject of any State Bar complaint by a judge.

6 16. DALTON, also a solo practitioner, has devoted his practice to helping  
7 victims of workplace harassment and discrimination. He has also been compensated at  
8 the upper hourly rate for attorneys with a similar level of experience in fee awards for his  
9 successful work in harassment and discrimination trials, including by Judge Stern in the  
10 *Gober v. Ralphs Grocery Co.* case.

11 17. Plaintiff DALTON has never been cited for contempt or fined to have  
12 engaged in attorney misconduct by any court; nor has he previously been the subject of  
13 any State Bar complaint by a judge.

14 **A. THE STATE BAR'S NOTICE OF DISCIPLINARY CHARGES**

15 18. On June 11, 2008, the State Bar of California, Office of the Chief Trial  
16 Counsel ("OCTC"), led by DREXEL, DAL CERRO, and BLUMENTHAL, issued a  
17 Notice of Disciplinary Charges ("NDC") against Plaintiffs KAY and DALTON. The  
18 charges, which consist of four counts with subparts, relate to three lawsuits litigated by  
19 KAY and DALTON. Specifically, Counts One, Three, and Four of the NDC allege  
20 violations of the California Business and Professions Code and the Rules of Professional  
21 Conduct against KAY and DALTON for allegedly improper conduct during trial in  
22 *Gober v. Ralphs* and *Marcisz v. UltraStar*, and Count Two alleges violations of the  
23 Business and Professions Code and the Rules of Professional Conduct against KAY for  
24 allegedly improper conduct with respect to the division of attorneys' fees after a  
25 successful result in *Weeks v. Baker & McKenzie*.

26 19. None of the charges or allegations in the NDC were initiated by any former  
27 or current clients of Plaintiff Attorneys. No harm has been caused to any client, party or  
28 institution in any of the cases that are the subject of the NDC.



1       20. The charges seek to disbar Plaintiff KAY for the practice of law and to  
2 suspend Plaintiff DALTON for sixth months to up to two years.

3       21. Such a result will have a devastating effect on Plaintiff KAY resulting in his  
4 expulsion from the highly successful practice he has had for the past 27 years. It will  
5 also injure his present clients and remove from the practice of law one of the most  
6 successful practitioners ever who have focused on representing women who have been  
7 discriminated against.

8       22. Similarly, it will injure Plaintiff DALTON both financially and in his  
9 reputation.

10               **(1) Counts 1 & 4: *Gober v. Ralphs Grocery Co.***

11       23. Count 1 includes allegations against KAY and/or DALTON for, *inter alia*,  
12 moral turpitude, dishonesty or corruption [Cal. Bus. & Profs Code § 6106], and  
13 harassing or embarrassing a discharged juror [Cal. Rule Prof. Conduct, rule 5-320(D)].  
14 Count 4 is a duplicative allegation of moral turpitude against KAY, based in part on  
15 alleged misconduct during *Gober*.

16       24. In 1996, plaintiffs Dianne Gober, Terrill L. Finton, Sarah Lang, Talma  
17 (Peggy) Noland, Suzanne Papiro and Tina Swann (collectively, the *Gober* plaintiffs)  
18 sued their employer, Ralphs Grocery Company (Ralphs), for sexual harassment. The  
19 case was tried before San Diego County Superior Court Judge Joan P. Weber in 1998.  
20 The jury held Ralphs liable to the plaintiffs for compensatory and punitive damages in  
21 the amount of approximately \$3.85 million dollars.

22       25. Ralphs moved for new trial alleging, *inter alia*, juror misconduct and  
23 attorney misconduct (i.e., "irregularity in the proceedings" under Code of Civil  
24 Procedure section 657(1)). Judge Weber granted a partial new trial based as to punitive  
25 damages only, based exclusively on juror misconduct (i.e., a juror's bringing information  
26 into the deliberations regarding the net worth of defendant). In denying the motion on  
27 issues unrelated to punitive damages, Judge Weber rejected Ralphs' allegations, many of  
28 which are virtually identical to those now being advanced in the NDC.

1        26. On appeal, the Court of Appeal affirmed liability for sexual harassment and  
2 punitive damages, as well as the amount of the compensatory awards, and remanded the  
3 matter for retrial as to the amount of punitive damages only. In its opinion, the Court of  
4 Appeal neither commented on nor made any findings concerning the conduct of Plaintiff  
5 Attorneys, despite the appellate record containing the defendant's motions making  
6 numerous claims of attorney misconduct by Plaintiffs Attorneys.

7        27. Before the amount of punitive damages issue was retried, Judge Weber  
8 disqualified herself based on a conflict. Judge Michael M. Anello was assigned to handle  
9 the retrial.

10       28. After a nearly two-month retrial, the jury rendered a verdict awarding each  
11 plaintiff \$5 million in punitive damages – a total of \$30,000,000. Ralphs again moved  
12 for new trial alleging, *inter alia*, excessive damages (i.e., "excessive damages" under  
13 Code of Civil Procedure section 657(5) and attorney misconduct (i.e., "irregularity in the  
14 proceedings" under Code of Civil Procedure section 657(1)). Judge Anello ruled that  
15 unless plaintiffs agreed to a reduction of their individual punitive damages awards to a  
16 small fraction of what was awarded by the jury, he would grant a partial new trial as to  
17 the amount of punitive damages only. Plaintiffs did not agree to the reduction, and thus  
18 the Order automatically triggered a partial new trial based on excessive damages  
19 pursuant to Code of Civil Procedure section 657(5). In basing the Order on "excessive  
20 damages" and denying it as to "all other grounds," Judge Anello necessarily rejected  
21 Ralphs's allegations of "attorney misconduct." After the granting of the new trial,  
22 several of the jurors spoke publicly about their dismay with Judge Anello because of his  
23 granting of a new trial for punitive damages. Judge Anello then sought the "help" of the  
24 State Bar prosecutors to help him "reclaim his reputation publicly." The State Bar  
25 prosecutors' efforts to provide the requested assistance to Judge Anello is admitted in an  
26 October 2003 email from State Bar prosecutor Alan Konig to State Bar prosecutor DAL  
27 CERRO.

28       29. On appeal, the Court of Appeal granted the relief sought by the *Gober*

1 plaintiffs – a retrial on the amount of punitive damages before a new judge who was  
2 pre-instructed by the Court of Appeal to properly consider all relevant evidence without  
3 regard to the rulings in prior trials. In its opinion, the Court of Appeal neither  
4 commented on nor made any findings concerning the conduct of Plaintiff Attorneys. In  
5 addition, the Court of Appeal granted plaintiffs' motion to disqualify Judge Anello "in  
6 the interests of justice" pursuant to Code of Civil Procedure section 170.1(c). The case  
7 was reassigned to Judge Jacqueline M. Stern.

8         30.     Ralphs petitioned for review based on a newly-decided California Supreme  
9 Court case concerning punitive damages, *Simon v. Sao Paolo Holding Co., Inc.* (2005)  
10 35 Cal.4th 1159 (2005). Review was granted and the California Supreme Court ordered  
11 remand with instructions for the Court of Appeal to review its opinion "in light of  
12 *Simon*." On March 1, 2006, the Court of Appeal issued a new opinion in which it held  
13 that the amount of punitive damages recoverable by plaintiffs based on the facts of the  
14 case was limited to a 6 to 1 ratio of compensatory damages to punitive damages, and that  
15 the matter could be decided by appellate determination without retrial. In its opinion, the  
16 Court of Appeal neither commented on nor made any findings concerning the conduct of  
17 Plaintiff Attorneys. This resulted in a total Judgement for the *Gober* plaintiffs in a total  
18 amount exceeding \$7 million.

19         31.     After the trial court entered judgment as directed, Plaintiff Attorneys filed a  
20 motion for attorneys' fees. Finding that Plaintiffs Attorneys' reputation, experience, and  
21 ability warranted the highest hourly rate possible, Judge Stern awarded the Plaintiffs  
22 Attorneys their requested hourly lodestar, resulting in a total award of attorneys' fees and  
23 costs in excess of \$8 million.

24         32.     The facts underlying the allegation in the NDC concerning harassment or  
25 embarrassment of a discharged juror are that, after the jury was discharged from two of  
26 the subject trials, Plaintiff Attorneys communicated in writing with the discharged jurors.  
27 The purpose of this communication with the discharged jurors was to explore and  
28 discuss the potential impact upon the jurors of certain evidence that had been precluded



1 from the juries consideration during trial and to solicit the jurors' opinion regarding  
 2 whether that evidence would have affected their decisions. Judge Anello had attempted  
 3 to order plaintiff attorneys not to discuss this evidence with the jurors after their  
 4 discharge.

5 **(2) Count 2: *Weeks v. Baker & McKenzie* and *Chambers v. Kay***

6 33. Count 2 consists of allegations against KAY for dividing a fee without the  
 7 client's written consent [Cal. Rule Prof. Conduct, rule 2-200].

8 34. *Weeks v. Baker & McKenzie*, a case filed in 1992, involved claims of sexual  
 9 harassment brought by plaintiffs Rena Weeks and Mary Rossman, represented by KAY,  
 10 against their employer, Baker & McKenzie, and attorney Martin Greenstein. KAY  
 11 brought in attorney Arthur Chambers to assist with the case; however, Arthur Chambers'  
 12 legal services were terminated by the plaintiffs upon discovery of malfeasance on his  
 13 part. Alan Exelrod was retained in place of Mr. Chambers. The *Weeks* case eventually  
 14 went to trial and a multi-million dollar verdict was obtained as to Ms. Weeks and a  
 15 settlement reached as to the Ms. Rossman.

16 35. Mr. Chambers brought suit against KAY and sought to recover a  
 17 contingency percentage payment for the minimal work he performed, without having  
 18 obtained written consent from the clients as required by Rules of Professional Conduct,  
 19 rule 2-200, which the California Supreme Court, in *Chambers v. Kay* (2002) 29 Cal.4th  
 20 142, determined was his obligation. The *Chambers* Court further held that KAY did not  
 21 violate Rule 2-200 because there was no sharing of a contingency fee. Since there was  
 22 no violation of Rule 2-200, there also could not be a violation of rule 1-120 ("a member  
 23 shall not knowingly assist in, solicit, or induce any violation of these rules or the State  
 24 Bar Act), which is also alleged against KAY in the NDC.

25 **(3) Counts 3 & 4: *Marcisz, et al., v. UltraStar Cinemas***

26 36. Count 3 includes allegations against KAY and/or DALTON for, *inter alia*,  
 27 moral turpitude, dishonesty or corruption [Cal. Bus. & Profs Code § 6106]. Count 4 is a  
 28 duplicative allegation of moral turpitude against KAY, based in part on alleged

1 misconduct during *Marcisz*.

2       37. In 2003, Plaintiff Clients filed suit against UltraStar Cinemas based on the  
3 sex harassment they were subjected to while they were teenagers working as ushers,  
4 concessionaires, ticket takers, and box office attendants at an UltraStar theater. The  
5 harassers, their supervisors, subjected them and other young women to conduct which  
6 included stalking, assaults, batteries, threats while brandishing and holding knives,  
7 offensive sex based comments, jokes, and innuendo, and pornographic photos.

8       38. The eight-week trial resulted in a verdict of \$850,000 in compensatory  
9 damages and \$6 million in punitive damages. As with the *Gober* case, UltraStar moved  
10 for a new trial on various grounds, including "attorney misconduct" (i.e., "irregularity in  
11 the proceedings" under Code of Civil Procedure section 657(1)) and "excessive  
12 damages" under Code of Civil Procedure section 657(5). Judge John S. Meyer granted a  
13 partial new trial as to the amount of compensatory and punitive damages on the sole  
14 basis of "excessive damages" under Code of Civil Procedure section 657(5). At the  
15 hearing on UltraStar's motion, Judge Meyer expressly rejected attorney misconduct as a  
16 basis for the court's ruling:

17       Counsel for UltraStar:

18       "... this court has not ruled on or has not based its ruling for new trial specifically  
19 only on attorney misconduct ... MTEG while it agrees strongly with the court's  
20 conclusions regarding the excessiveness of damages, also would urge that the other  
21 alternative basis for new trial contained in its motion are meritorious."

22       Judge Meyer:

23       "I've thought about that, and I respectfully disagree."

24       Then again, later in the proceeding:

25       Mr. Kay:

26       "... Ms. Houlahan misspoke, she said that you granted the motion based on  
27 attorney misconduct, it isn't, it was granted -

28       THE COURT:

1 "No, I don't think she said that and if she did, she did misspeak."

2 39. On appeal, the Court of Appeal reinstated the amount in compensatory  
3 damages awarded by the jury and remanded the case for retrial regarding on the amount  
4 of punitive damages only. Relying on the trial court's reasoning, the Court of Appeal  
5 likewise rejected UltraStar's allegations of attorney misconduct as a basis for a new trial:

6 In its motion UltraStar argued, among other things, that the misconduct of  
7 Plaintiffs' counsel necessitated a new trial, but the trial court rejected this  
8 argument by not granting a new trial on this ground and it noted at oral  
9 argument that this, and the other grounds argued by UltraStar as a basis for  
10 a new trial, were not meritorious. . . .

11 (Emphasis added.)

12 40. On remand for retrial of the amount of punitive damages, Judge Meyer was  
13 disqualified pursuant to Code of Civil Procedure section 170.6.

14 41. The retrial of the amount of punitive damages is expected to take place  
15 within the next several months.

16 42. Despite the filing of proper applications by Plaintiff Attorneys to the State  
17 Bar Court for a stay and abatement of the State Bar proceedings against Plaintiff  
18 Attorneys to allow them to represent Plaintiff Clients in the retrial, the State Court has  
19 refused the request. As a result of the fact that Plaintiffs will be engaged in the defense  
20 of the State Bar trial, they are likely to be impaired in their ability to adequately represent  
21 Plaintiff Clients and may be precluded altogether from representing their clients in the  
22 retrial.

23 **B. THE STATE BAR'S SELECTIVE PROSECUTION OF KAY AND**  
24 **DALTON**

25 43. Plaintiff KAY had filed a complaint of misconduct against defense counsel  
26 in the *Gober* and *Marcisz* cases, alleging attorney misconduct during the trials. He also  
27 filed a complaint against Chambers in the *Weeks* matter. Following the Pretrial  
28 Conference in the State Bar proceedings, Plaintiff Attorneys on March 2, 2009, received

1 a letter from Erin McKeown Joyce of the State Bar OCTC Intake regarding KAY's  
 2 complaints against defense counsel in the *Gober* and *Marcisz* trials and attorney Arthur  
 3 Chambers. The letter, dated February 26, 2009, states in part:

4 . . . (I)n reviewing the transcripts and information you did provide, it is clear  
 5 that the trial courts in both cases did not make any finding that any of the  
 6 attorneys intentionally violated the courts' in limine orders warranting  
 7 censure by the court or discipline by the State Bar. The trial courts did not  
 8 make any findings against any of the attorneys sufficient to warrant a State  
 9 Bar Investigation.

10 (Emphasis added.)

11 Ms. Joyce went further and stated:

12 The trial courts are in the best position to determine if an attorney has  
 13 committed a violation of Business and Professions Code section 6103, or if  
 14 an attorney has provided false testimony in violation of Business and  
 15 Professions Code section 6068(d). There appears to be no basis for the State  
 16 Bar to investigate your allegations absent such findings by the courts in  
 17 question. (Emphasis added.)

18 Finally, Ms. Joyce noted:

19 As for your complaint against Mr. Chambers, it is barred by the statute of  
 20 limitations. . ."

21 (Emphases added.) Thus, OCTC has admitted that there is no legal basis to open an  
 22 investigation against any attorneys, even for the very same allegations of misconduct for  
 23 which OCTC is now prosecuting Plaintiff Attorneys. Further, as stated in the letter from  
 24 Ms. Joyce as quoted above, the allegations concerning the *Weeks* matter were "barred by  
 25 the statute of limitations."

26 ///

27 ///

28 **C. CONCEALED EXCULPATORY EVIDENCE AND PROSECUTORIAL**

**MISCONDUCT REVEALED IN RECORD FROM *KONIG v. DAL CERRO***

44. One of the original State Bar prosecutors involved in the KAY/DALTON prosecutions, Alan Konig, was terminated for his employment with the State Bar. Prosecutor Konig subsequently filed a federal action against the State Bar for retaliation and constructive wrongful termination, in which he alleged that his complaints of judicial misconduct against the State Bar Court were some of the motivating factors for the retaliation he allegedly suffered. (*Konig v. Dal Cerro, et al*, Case No. C-04-221 0 MJJ, and related 9<sup>th</sup> Circuit-hereafter referred to as the "*Konig case*" or the "*Konig action*."

**(1) Concealed Evidence that Five-Years Limitations Period Bars Charges in Count 1**

45. According to rule 2401 of the Rules of Procedure of the State Bar of California ("State Bar Rules"), the State Bar may open an inquiry or investigation in two circumstances, "on its own accord or upon receipt of a communication concerning the conduct of a member of the State Bar."

46. State Bar Rules of Procedure, rule 51 (a), provides a five-year limitations period from the date of the alleged violation for the initiation of disciplinary proceedings. However, rule 51(e) allows OCTC to avoid the five-year limitations period when disciplinary proceeding are initiated based on information received from a source independent of a time-barred complainant.

47. In the proceedings against KAY and DALTON, OCTC submitted declarations that state that Judge Anello was *not* the "complainant" who initiated the investigation as defined by rules 2.26 and 2.28 of the State Bar Rules of Procedure.

48. However, in their defense of the Konig federal action, the OCTC defendants submitted declarations and documents to the U.S. District Court establishing that Judge Anello was the "complaining witness" in the State Bar proceedings.

49. Thus, under Rule 51 (a), the proceedings are time barred and should not have been brought.



**(2) Concealed Evidence That OCTC Improperly Brought Charges  
Against Plaintiffs Attorneys and Engaged in *Ex Parte*  
Communications with State Bar Judges**

50. Plaintiff KAY moved to unseal the records in the *Konig* action and obtained a number of relevant declarations and memoranda.

51. In defense of the *Konig* case, the State Bar had retained Charlotte Addington to investigate *Konig*'s many complaints against OCTC prosecutors and the State Bar Court judges. Among the matters discussed in the Addington report are findings that *ex parte* communications occurred between the State Bar Court and the OCTC. The report found that such improper communications exist, stating at page 47:

(OCTC prosecutor) Mr. Dal Cerro occasionally has informal meetings with the State Bar Court judges to discuss matters relating to procedure and practice. At one such meeting, the judges spoke about the tendency of the OCTC to overcharge when preparing the initial NDC, which often causes problems later in the case.

52. OCTC's "overcharging" in the NDC is one of many complaints Plaintiff Attorneys have about OCTC's handling of the State Bar proceedings. The Addington report refers to the "judges" who met with DAL CERRO in informal *ex parte* meetings. DAL CERRO is the Assistant Chief Trial Counsel assigned to Plaintiff Attorneys' State Bar proceedings.

53. Plaintiff Attorneys had requested in the State Bar proceedings that all *ex parte* communications be disclosed. Defendants refused to provide such information. On information and belief, "judges" referred to in the Addington report are most likely, and at a minimum, Judges Remke and McElroy. On information and belief, Judges Remke and McElroy were the Hearing Department judges at the relevant time the investigation was done.

54. At no time did the State Bar Court judges disclose to Plaintiffs Attorneys that they had provided OCTC with legal advice regarding OCTC's tendency to

1 overcharge. At no time did the State Bar Court disclose to Plaintiff Attorneys that it had  
 2 held such ex parte meetings with OCTC prosecutors in the past or even whether such  
 3 meetings continue to this day. OCTC has provided no such disclosure either. Moreover,  
 4 the investigative report by Addison was also not provided to Plaintiffs Attorneys.

### 5 (3) Concealed Evidence of Bias of State Bar Judges

6 55. The Addison report further states that State Judges Remke and McElroy  
 7 have personal knowledge and pre-existing opinions as to the credibility of certain  
 8 witnesses, including Konig, and/or other matters relevant to the disciplinary proceedings  
 9 against KAY and DALTON. The report discusses at page 5 another of Judge Remke's ex  
 10 parte communications with OCTC Chief Trial Counsel DREXEL and/or DAL  
 11 CERRO regarding Mr. Konig. Additionally, at pages 50-53, the Addington report  
 12 contains "interviews" with Judges Remke and McElroy and makes favorable findings  
 13 regarding their judicial conduct, which arose from the accusations made by Konig  
 14 against the State Bar Court, culminating in the Addington investigation report.

## 15 D. CONTINUED IMPROPER HANDLING OF PROCEEDINGS BY STATE 16 BAR AND OCTC

### 17 (1) Biased Judge Rules on Disqualification of State Bar Judges

18 56. Plaintiff Attorneys moved to disqualify State Bar Judges Remke and  
 19 McElroy under State Bar Rule of Procedure rule 106(a), which follows the  
 20 disqualification standard provided in Code of Civil Procedure section 170.1.

21 57. Plaintiff Attorneys filed motions and verified statements of disqualification  
 22 regarding State Bar Court Judges Joann Remke, Patrice McElroy, and Lucy  
 23 ARMENDARIZ. According to the State Bar website, Judge Remke is the Presiding  
 24 Judge for the State Bar Court and Judge McElroy is the Supervising Judge for the State  
 25 Bar Court. Judge ARMENDARIZ is the judge assigned to Plaintiff Attorneys' State Bar  
 26 trial. The basis of the motions for disqualification was the discovery of improper ex  
 27 parte communications between the State Bar Court and OCTC as revealed from the  
 28 record in the *Konig* case.

58. State Bar Judge Richard Platel had worked as an attorney for OCTC while the State Bar proceedings against Plaintiff Attorneys were pending. Without disclosing the relevant facts related to his work for OCTC during this time, State Bar Judge Richard Platel accepted jurisdiction over the disqualification motions and summarily denied them.

**(2) The State Bar Refused to Investigate the Conduct of OCTC Chief Trial Counsel Scott Drexel and Allows Him to Control the Prosecution of Kay and Dalton**

59. When KAY was advised of the allegations against him, he showed OCTC prosecutor BLUMENTHAL evidence which directly refuted many of the allegations. On information and belief, BLUMENTHAL provided the evidence to Chief Trial Counsel DREXEL. Even though he knew many of the allegations were false, DREXEL proceeded to issue the NDC against Plaintiff Attorneys. KAY then filed a complaint for prosecutorial misconduct against, among others, Chief Trial Counsel DREXEL. When "[t]he inquiry involves the Chief Trial Counsel," rule 2201(i)(1) of the State Bar Rules of Procedure requires the appointment and immediate investigation of the charges by a Special Deputy Trial Counsel. Yet, in violation of the rule, the State Bar did not order an immediate investigation by a Special Deputy Trial; instead, it allowed DREXEL to continue to supervise and control the prosecution of KAY and DALTON. Further, as stated in a letter from Robert Hawley on behalf of the State Bar to KAY, the State Bar intends to improperly base its determinations concerning DREXEL's conduct on the outcome of the prosecution of KAY and DALTON:

Please note that because aspects of your complaint may well be addressed in your pending disciplinary proceeding now scheduled for trial in March of 2009, the review undertaken here will await the outcome of the trial and any appeals thereafter before reaching any final conclusions.

**(3) Constitutional Issues Are Disfavored in State Bar Proceedings**

60. In addition, Supervising Judge McElroy admitted to KAY and DALTON

1 that she did not like to consider Constitutional issues raised in State Bar proceedings.  
 2 Specifically, she stated during a settlement conference in the State Bar proceedings  
 3 brought against KAY and DALTON that she did not like to see "Amendments" referred  
 4 to in briefs because she did not like it when attorneys raised constitutional issues.

5 **(4) Improper Involvement of Disqualified State Court Judges in State**  
 6 **Bar Proceedings Against Kay and Dalton**

7 61. The State Bar/OCTC defendants have intricately involved state court Judges  
 8 Anello, Weber and Meyer in the disciplinary proceedings against KAY and DALTON,  
 9 all of whom were disqualified in the two state court lawsuits addressed in the charges.  
 10 For instance, in his March 6, 2009 email, Judge Anello seeks to have OCTC provide him  
 11 with legal advice, while stating his concerns of being exposed to cross-examination and  
 12 his intent not comply with Plaintiff Attorneys' subpoena duces tecum:

13 As discussed today with Jim Hyland (sp?), enclosed is a copy of the  
 14 subpoena served on me at court yesterday. I expect my communications  
 15 with the State Bar and your office may be relevant, so I intend to bring  
 16 copies of those documents with me. Subject to your advice to the contrary,  
 17 my communications with other judges don't appear to be relevant here, so I  
 18 don't intend to bring anything with regard to those requests. My concern  
 19 there is that Mr. Kay is simply trying to drum something up to use in his  
 20 ongoing complaints to the Commission on Judicial Performance regarding  
 21 my alleged "judicial misconduct. I hope we'll be able to limit Mr. Kay's  
 22 evidence and questioning to relevant matters."

23 (Emphasis added.)

24 62. OCTC has indicated that it is seeking to prove the NDC allegations against  
 25 Plaintiff Attorneys through testimony of the disqualified state court judges, Anello,  
 26 Weber, and Meyer.

27 ///

28 ///

**(5) Plaintiffs Attorneys Are Subjected to Ongoing Denial of Basic Rights in the State Bar Proceedings**

63. The State Bar continues to deny KAY and DALTON their basic rights in the State Bar proceedings, including, *inter alia*, by refusing their request for a court reporter to contemporaneously transcribe the hearing proceedings as permitted under Business and Professions Code section 6801.1.

**E. PLAINTIFFS KAY AND DALTON WILL NOT RECEIVE A FAIR TRIAL SUBJECT TO MEANINGFUL REVIEW**

64. According to a former State Bar prosecutor who now serves as an expert on professional responsibility in federal and state courts, since the institution of "professional judges" within the State Bar Court, petitions for review by respondent attorneys to the California Supreme Court regarding matters decided in the Hearing and Review Departments are nearly always denied, and, in the rare case in which review is granted, it is almost always the case that the Supreme Court has largely deferred to the State Bar Court's decision or resulted in increasing the negative result on the respondent since the establishment of the State Bar's professional court, respondent attorneys' petitions for review State Bar matters are rarely reviewed by the California Supreme Court, in which a respondent attorney was granted affirmative relief that improved his situation.

65. Further, the California Supreme Court deals with the disciplinary system as though the Court and the State Bar prosecutor's office are operating some kind of joint venture, including ex-parte communications regarding matters which significantly affect accused attorneys.

66. Thus, the possibility of obtaining a meaningful review by the California Supreme Court is primarily theoretical, and it would be a mistake for a respondent to place any reliance upon the belief that he will receive a thoughtful or objective review in that Court. This conclusion, that "opportunity" for review is largely illusory, is supported by California Supreme Court Justice Janice Brown's dissent in the case of *In*



1 *re Rose*, 22 Cal.4th 430, 466-470, 466-470 (2000).

2 67. Many of the negative consequences “antithetical to the constitutional  
3 design” discussed in Justice Brown’s dissent, have come to pass under the current  
4 disciplinary system, in which attorneys are, among other things, being denied their right  
5 to genuine and impartial judicial review, potentially with far-reaching and deleterious  
6 consequences on an attorney's right to pursue a livelihood.

7 68. Moreover, the State Bar prosecutor's office is generally far more inclined to  
8 prosecute charges against solo or small firm practitioners than it is large firms  
9 representing corporate interests at least in part because the Bar appears to accord greater  
10 credibility to the explanations and assertions of attorneys from large firms.

## 11 **V. CAUSES OF ACTION**

### 12 **FIRST CAUSE OF THE ACTION**

#### 13 **VIOLATION OF 42 U.S.C. §1983 (PROCEDURAL DUE PROCESS)**

14 **(Plaintiffs Kay and Dalton Against All Defendants, Including Fujie, Armendariz,**  
15 **Drexel, Blumenthal, and Dal Cerro, in Their Individual and Official Capacities)**

16 69. The allegations set forth in foregoing paragraphs of this Complaint are  
17 realleged and incorporated by reference as if fully set forth herein.

18 70. In perpetrating the above described acts and omissions, defendant STATE  
19 BAR OF CALIFORNIA was, at all relevant times herein, a governmental agency of the  
20 State of California, and defendants ARMENDARIZ, DREXEL, BLUMENTHAL, and  
21 DAL CERRO were, at all relevant times herein, its agents/employees. Thus, defendants’  
22 above-described acts and omissions constitute cognizable state action under color of  
23 state law.

24 71. In perpetrating the above-described acts and failures to act, the defendants,  
25 and each of them, engaged in a pattern, practice, policy, tradition and/or custom of  
26 depriving Plaintiffs KAY and DALTON of their right to adequate notice and a fair trial  
27 in violation of the Fourteenth Amendment to the United States Constitution. Because  
28 rights under the federal Constitution are federally protected, defendants also violated

1 Plaintiffs' rights under 42 U.S.C. § 1983.

2 72. At all relevant times herein, there existed within the State Bar of California  
3 as promulgated by the BOARD OF GOVERNORS OF THE STATE BAR OF  
4 CALIFORNIA, a pattern, policy, practice, tradition, custom, and usage of conduct of  
5 depriving Plaintiffs KAY and DALTON of their right to adequate notice and a fair trial  
6 in violation of the Fourteenth Amendment to the United States Constitution, which  
7 resulted in deliberate indifference to Plaintiffs' procedural due process rights.

8 73. The acts set forth herein constitute a policy, practice, or custom of ordering,  
9 ignoring, encouraging, causing, tolerating, sanctioning, and/or acquiescing in the  
10 violation by STATE BAR personnel of the constitutional right of Plaintiffs to adequate  
11 notice and a fair trial.

12 74. The acts and failures to act as alleged herein also result from a custom,  
13 practice or policy of inadequate training in a deliberate indifference to their right to  
14 adequate notice and a fair trial, and the injuries suffered by Plaintiff KAY and DALTON  
15 as alleged herein were caused by such inadequate training.

16 75. Defendants, and each of them, exhibited deliberate indifference to the  
17 violation of Plaintiffs' protected procedural due process rights by failing to investigate  
18 their complaints.

19 76. Defendant FUJIE and Does 1-50 are policymakers for defendant STATE  
20 BAR. The acts and failures to act as alleged herein were done pursuant to policies and  
21 practices instituted by these defendants pursuant to their authority as policymakers for  
22 the City.

23 77. As a result of the acts and failures to act as alleged herein, and as a result of  
24 the STATE BAR's customs, traditions, usages, patterns, practices, and policies, Plaintiffs  
25 were deprived of their constitutional rights to due process, and suffered damages caused  
26 thereby as more particularly alleged above.

27 78. Unless and until defendants' unlawful policies and practices as alleged  
28 herein are enjoined and restrained by order of this Court, defendants will continue to

1 cause great and irreparable injury to Plaintiffs.

2 **SECOND CAUSE OF THE ACTION**

3 **VIOLATION OF 42 U.S.C. §1983 (FREE SPEECH)**

4 **(Plaintiffs Kay and Dalton Against All Defendants, Including Fujie, Drexel,**  
 5 **Blumenthal, and Dal Cerro, in Their Individual and Official Capacities)**

6 79. The allegations set forth in foregoing paragraphs of this Complaint are  
 7 realleged and incorporated by reference as if fully set forth herein.

8 80. In perpetrating the above described acts and omissions, defendant STATE  
 9 BAR OF CALIFORNIA was, at all relevant times herein, a governmental agency of the  
 10 State of California, and defendants ARMENDARIZ, DREXEL, BLUMENTHAL, and  
 11 DAL CERRO were, at all relevant times herein, its agents/employees. Thus, defendants'  
 12 above-described acts and omissions constitute cognizable state action under color of  
 13 state law.

14 81. In perpetrating the above-described acts and failures to act, the defendants,  
 15 and each of them, engaged in a pattern, practice, policy, tradition and/or custom of  
 16 restraining and enacting impermissible prior restraints on Plaintiffs' free speech on  
 17 matters of public concern in violation of the First Amendment to the United States  
 18 Constitution and the California Constitution. Because rights under the federal and state  
 19 Constitutions are federally protected, defendants also violated Plaintiffs' rights under 42  
 20 U.S.C. § 1983.

21 82. At all relevant times herein, there existed within the State Bar of California  
 22 as promulgated by the BOARD OF GOVERNORS OF THE STATE BAR OF  
 23 CALIFORNIA, a pattern, policy, practice, tradition, custom, and usage of conduct of  
 24 restraining the free speech of and enacting impermissible prior restraints on attorneys  
 25 practicing law in California on matters of public concern, which resulted in a deliberate  
 26 indifference to Plaintiffs' rights to free speech.

27 83. The acts set forth herein constitute a policy, practice, or custom of ordering,  
 28 ignoring, encouraging, causing, tolerating, sanctioning, and/or acquiescing in the

1 violation by STATE BAR personnel of the constitutional rights to free speech of  
2 attorneys practicing law in California on matters of public concern.

3 84. The acts and failures to act as alleged herein also result from a custom,  
4 practice or policy of inadequate training in a deliberate indifference to the rights of  
5 attorneys practicing law in California who speak out on matters of public concern, and  
6 the injuries suffered by plaintiff as alleged herein were caused by such inadequate  
7 training.

8 85. Defendants, and each of them, exhibited deliberate indifference to the  
9 violation of Plaintiff's protected speech rights by failing to investigate their complaints  
10 or provide them with protection from unlawful conduct.

11 86. Defendant FUJIE and Does 1-50 are policymakers for defendant STATE  
12 BAR. The acts and failures to act as alleged herein were done pursuant to policies and  
13 practices instituted by these defendants pursuant to their authority as policymakers for  
14 the City.

15 87. As a result of the acts and failures to act as alleged herein, and as a result of  
16 the STATE BAR's customs, traditions, usages, patterns, practices, and policies, Plaintiffs  
17 were deprived of their constitutional rights to free speech, and suffered damages caused  
18 thereby as more particularly alleged above.

19 88. Unless and until defendants' unlawful policies and practices as alleged  
20 herein are enjoined and restrained by order of this Court, defendants will continue to  
21 cause great and irreparable injury to Plaintiffs.

### 22 **THIRD CAUSE OF ACTION**

#### 23 **VIOLATION OF 42 U.S.C. § 1983 (SUBSTANTIVE DUE PROCESS)**

#### 24 **(Plaintiffs Against All Defendants, Including Fujie, Armendariz, Drexel,** 25 **Blumenthal, and Dal Cerro)**

26 89. The allegations set forth in foregoing paragraphs of this Complaint are  
27 realleged and incorporated by reference as if fully set forth herein.

28 90. In perpetrating the above described acts and omissions, defendant STATE

1 BAR OF CALIFORNIA was, at all relevant times herein, a governmental agency of the  
2 State of California, and defendants ARMENDARIZ, DREXEL, BLUMENTHAL, and  
3 DAL CERRO were, at all relevant times herein, its agents/employees. Thus, defendants'  
4 above-described acts and omissions constitute cognizable state action under color of  
5 state law.

6 91. In perpetrating the above-described acts and failures to act, the defendants,  
7 and each of them, engaged in a pattern, practice, policy, tradition and/or custom of  
8 depriving Plaintiffs KAY and DALTON of their right to practice law without undue and  
9 unreasonable government interference in violation of the Fourteenth Amendment to the  
10 United States Constitution. Because rights under the federal Constitution are federally  
11 protected, defendants also violated Plaintiffs' rights under 42 U.S.C. § 1983.

12 92. At all relevant times herein, there existed within the State Bar of California  
13 as promulgated by the BOARD OF GOVERNORS OF THE STATE BAR OF  
14 CALIFORNIA, a pattern, policy, practice, tradition, custom, and usage of conduct of  
15 depriving Plaintiffs licensed to practice law in the State of California of their right to  
16 practice their profession without undue and unreasonable government interference in  
17 violation of the Fourteenth Amendment to the United States Constitution, which resulted  
18 in deliberate indifference to Plaintiffs' right to practice their profession.

19 93. The acts set forth herein constitute a policy, practice, or custom of ordering,  
20 ignoring, encouraging, causing, tolerating, sanctioning, and/or acquiescing in the  
21 violation by STATE BAR personnel of the constitutional rights of attorneys licensed to  
22 practice law in the State of California to practice law without undue and unreasonable  
23 government interference.

24 94. The acts and failures to act as alleged herein also result from a custom,  
25 practice or policy of inadequate training in a deliberate indifference to the rights of  
26 attorneys licensed to practice law in the State of California to practice law without undue  
27 and unreasonable government interference, and the injuries suffered by Plaintiff KAY  
28 and DALTON as alleged herein were caused by such inadequate training.



1        95. In perpetrating the above-described acts and failures to act, the defendants,  
2 and each of them, also engaged in a pattern, practice, policy, tradition and/or custom of  
3 depriving MARCISZ, B. POLLASTRINI, and J. POLLASTRINI of their right of access  
4 to the courts, which necessarily includes the right to be represented by the attorneys of  
5 their choice, in violation of the Fourteenth Amendment to the United States Constitution.  
6 Because rights under the federal Constitution are federally protected, defendants also  
7 violated Plaintiffs' rights under 42 U.S.C. § 1983.

8        96. At all relevant times herein, there existed within the State Bar of California  
9 as promulgated by the BOARD OF GOVERNORS OF THE STATE BAR OF  
10 CALIFORNIA, a pattern, policy, practice, tradition, custom, and usage of conduct of  
11 depriving litigants of their right of access to the courts, which necessarily includes the  
12 right to be represented by the attorneys of their choice, which has resulted in a deliberate  
13 indifference to Plaintiffs' right of access to the courts.

14        97. The acts set forth herein constitute a policy, practice, or custom of ordering,  
15 ignoring, encouraging, causing, tolerating, sanctioning, and/or acquiescing in the  
16 violation by STATE BAR personnel of the constitutional rights of litigants of access to  
17 the courts, which necessarily includes the right to be represented by the attorneys of their  
18 choice.

19        98. The acts and failures to act as alleged herein also result from a custom,  
20 practice or policy of inadequate training in a deliberate indifference to the rights of  
21 litigants, and the injuries suffered by Plaintiffs MARCISZ, B. POLLASTRINI, and J.  
22 POLLASTRINI as alleged herein were caused by such inadequate training.

23        99. Defendants, and each of them, exhibited deliberate indifference to the  
24 violation of Plaintiffs' protected due process rights by failing to investigate their  
25 complaints or provide them with protection from unlawful conduct.

26        100. Defendant FUJIE and Does 1-50 are policymakers for defendant STATE  
27 BAR. The acts and failures to act as alleged herein were done pursuant to policies and  
28 practices instituted by these defendants pursuant to their authority as policymakers for

1 the City.

2 101. As a result of the acts and failures to act as alleged herein, and as a result of  
3 the STATE BAR's customs, traditions, usages, patterns, practices, and policies, Plaintiffs  
4 were deprived of their constitutional rights to due process and suffered damages caused  
5 thereby as more particularly alleged above.

6 102. Unless and until defendants' unlawful policies and practices as alleged  
7 herein are enjoined and restrained by order of this Court, defendants will continue to  
8 cause great and irreparable injury to Plaintiffs.

#### 9 **FOURTH CAUSE OF ACTION**

##### 10 **VIOLATION OF 42 U.S.C. § 1983 (EQUAL PROTECTION)**

11 **(Plaintiffs Kay and Dalton Against All Defendants, Including Fujie, Armendariz,**  
12 **Drexel, Blumenthal, and Dal Cerro, in Their Individual and Official Capacities)**

13 103. The allegations set forth in foregoing paragraphs of this Complaint are  
14 realleged and incorporated by reference as if fully set forth herein.

15 104. In perpetrating the above described acts and omissions, defendant STATE  
16 BAR OF CALIFORNIA was, at all relevant times herein, a governmental agency of the  
17 State of California, and defendants ARMENDARIZ, DREXEL, BLUMENTHAL, and  
18 DAL CERRO were, at all relevant times herein, its agents/employees. Thus, defendants'  
19 above-described acts and omissions constitute cognizable state action under color of  
20 state law.

21 105. In perpetrating the above-described acts and failures to act, the defendants,  
22 and each of them, engaged in a pattern, practice, policy, tradition and/or custom of  
23 unlawful selective prosecution of solo practitioners who represent and advance the  
24 individual rights of plaintiffs in lawsuits in violation of the Equal Protection Clause of  
25 the Fourteenth Amendment to the United States Constitution. Because rights under the  
26 federal are federally protected, defendants also violated Plaintiffs' rights under 42 U.S.C.  
27 § 1983.

28 106. At all relevant times herein, there existed within the State Bar of California

1 as promulgated by the BOARD OF GOVERNORS OF THE STATE BAR OF  
2 CALIFORNIA, a pattern, policy, practice, tradition, custom, and usage of conduct of  
3 unlawful selective prosecution of civil laws against solo practitioner plaintiffs' lawyers,  
4 which resulted in a deliberate indifference to Plaintiffs' constitutional rights.

5 107. In perpetrating the above-described acts and failures to act, the defendants,  
6 and each of them, knowingly engaged in a pattern, practice, policy, tradition and/or  
7 custom of unlawful selective prosecution of civil laws against solo practitioner plaintiffs'  
8 lawyers in violation of the Equal Protection Clause of the Fourteenth Amendment to the  
9 United States Constitution. Because rights under the federal and state Constitutions are  
10 federally protected, defendants also violated Plaintiffs' rights under 42 U.S.C. § 1983.

11 108. The acts set forth herein constitute a policy, practice, or custom of ordering,  
12 ignoring, encouraging, causing, tolerating, sanctioning, and/or acquiescing in the  
13 violation by STATE BAR personnel of Plaintiffs' constitutional rights as solo  
14 practitioner plaintiffs' lawyers.

15 109. The acts and failures to act as alleged herein also result from a custom,  
16 practice or policy of inadequate training in a deliberate indifference to Plaintiffs'  
17 constitutional rights as solo practitioner plaintiffs' lawyers, and the injuries suffered by  
18 plaintiff as alleged herein were caused by such inadequate training.

19 110. Defendants, and each of them, exhibited deliberate indifference to the  
20 violation of Plaintiff's protected rights by failing to investigate their complaints and  
21 provide them with protection from unlawful conduct.

22 111. Defendant FUJIE and Does 1-50 are policymakers for defendant STATE  
23 BAR. The acts and failures to act as alleged herein were done pursuant to policies and  
24 practices instituted by these defendants pursuant to their authority as policymakers for  
25 the City.

26 112. As a result of the acts and failures to act as alleged herein, and as a result of  
27 the STATE BAR's customs, traditions, usages, patterns, practices, and policies, Plaintiffs  
28 were deprived of their constitutional equal protection rights and suffered damages

1 caused thereby as more particularly alleged above.

2 113. Unless and until defendants' unlawful policies and practices as alleged  
3 herein are enjoined and restrained by order of this Court, defendants will continue to  
4 cause great and irreparable injury to Plaintiffs.

5 **FIFTH CAUSE OF ACTION**

6 **INJUNCTIVE AND DECLARATORY RELIEF**

7 **(All Plaintiffs Against All Defendants)**

8 114. The allegations set forth in the foregoing paragraphs of this Complaint are  
9 realleged and incorporated by reference as if fully set forth herein.

10 115. As a result of Defendants' conduct, Plaintiffs have been injured, and in the  
11 absence of injunctive relief, will be irreparably harmed. Plaintiffs have no adequate  
12 remedy at law. Plaintiffs, therefore, seek injunctive relief under the laws of equity to  
13 remedy their injuries and prevent any future injury to their persons.

14 116. There is an actual controversy between all Plaintiffs and Defendants, and  
15 Plaintiffs seek a declaration of their rights to be free of unlawful acts by Defendants, and  
16 each of them.

17 ///

18 ///

19 ///

**VI. PRAYER FOR RELIEF**

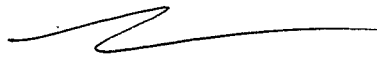
WHEREFORE, Plaintiffs respectfully request the Court to:

- (a) enter judgment in favor of Plaintiffs on all counts of the Complaint;
- (b) award injunctive relief by issuing a temporary restraining order, and preliminary and permanent injunctions restraining Defendants, and each of them, from infringing on Plaintiffs' constitutional rights to due process, free speech, and equal protection;
- (c) declare Defendants' actions unconstitutional;
- (d) award Plaintiffs the costs of suit including reasonable attorneys' fees; and
- (e) award Plaintiffs such other and further relief as the Court deems just under the circumstances.

DATED: March 16, 2009

Respectfully submitted,

HADSELL, STORMER, KEENY,  
RICHARDSON & RENICK, LLP

By   
Dan Stormer  
Attorneys for All Plaintiffs